

PT 98-98
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

BOBBY E. WRIGHT
HOUSING COMPLEX, INC.

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 95-16-1170

Real Estate Tax Exemption for
1995 Assessment Year

P.I.N.S: 16-11-412-054
16-11-412-055
16-11-412-056
16-11-412-057
16-11-412-058
16-11-412-061
16-11-412-062

Cook County Parcels

Alan I. Marcus,
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Leo G. Aubel of Mandel, Lipton & Stevenson on behalf of the Bobby E. Wright Housing Complex, Inc.

SYNOPSIS: This proceeding raises the following issues: (1) whether the Bobby E. Housing Complex, Inc. (hereinafter the "applicant") qualifies as an "institution of public charity" within the meaning of Section 200/15-65 of the Property Tax Code, 35 ILCS 200\1-1 *et seq.*¹ (2)

1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 *et seq.*).

whether real estate identified by Cook County Parcel Index Numbers 16-11-412-054, 16-11-412-055, 16-11-412-056, 16-11-412-057, 16-11-412-058, 16-11-412-061 and 16-11-412-062 (hereinafter collectively referred to as the "subject property") was "actually and exclusively used for charitable or beneficent purposes" as required by Section 15-65 of the Property Tax Code during the 1995 assessment year; and (3) whether the subject property qualifies for exemption from 1995 real estate taxes under Section 200/15-65(c) of the Property Tax Code, which exempts the following from real estate taxation:

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

The controversy arises as follows:

Applicant filed an Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on March 21, 1996. Dept. Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. *Id.*

The Department accepted this recommendation via a determination dated March 27, 1997. Said determination found that the subject property was neither in exempt ownership nor in exempt use. Dept. Ex. No. 2. Applicant thereafter filed a timely request for hearing as to this denial (Dept. Ex. No. 3) and subsequently presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's exemption denial be affirmed.

FINDINGS OF FACT:

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein, namely that the subject property was neither in exempt ownership nor in exempt use, are established by the admission into evidence of Dept. Ex. No. 2.
2. The subject property is located at 3212-3232 West Maypole Ave, Chicago, IL and improved with a 36,647.52 square foot apartment complex. Dept Group Ex. No. 1, Document B.
3. The complex, a 40 unit, 6-story structure, was used to provide housing and other services to developmentally disabled persons during the 1995 assessment year. *Id*

B. Applicant's Organizational and Financial Structure

4. Applicant was incorporated under the General Not for Profit Corporation Act of Illinois on April 11, 1985. Applicant's basic organizational purpose is to provide developmentally disabled persons with housing and services that are specially designed to meet their physical, social and psychological needs. Applicant Ex. No. 1.
5. Applicant's Articles of Incorporation provide that it is "irrevocably dedicated to and operated exclusively for, nonprofit purposes." Said Articles further provide, *inter alia*, that: (1) no part of the income or assets of the corporation shall neither be distributed to, nor inure to the benefit of, any individual associated with the enterprise; (2) the corporation is empowered to: (a) buy, own, sell assign, mortgage or lease any interest in real estate; (b) construct, maintain and operate improvements thereon necessary or incident to the accomplishment of its organizational purposes; and (c) do and perform all acts reasonably necessary to accomplish said purposes, including the execution of a Regulatory Agreement

with the Secretary of Housing and Urban Development, that will enable the corporation to secure the benefits of financing under Section 202 of the National Housing Act of 1959, 12 U.S.C.A. §1701 *et seq*; (3) in the event of dissolution of the corporation or the winding up of its affairs, or other liquidation of its assets, the corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the corporation's debts shall be conveyed or distributed only to an organization or organizations created or operated for nonprofit purposes similar to that of the applicant, provided however, that the corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development; and (4) so long as a mortgage on the corporation's property is held by the Secretary of Housing and Urban Development, these Articles may not be amended without the prior written approval of the said Secretary. *Id.*

6. Applicant's daily business affairs are governed by a 7-member Board of Directors who serve without compensation. *Id.*
7. The Internal Revenue Service determined that applicant is exempt from federal income tax, under Section 501(c)(3) of the Internal Revenue Code, on October 7, 1985. This exemption remained in full force and effect throughout the 1995 assessment year. Applicant Ex. No. 3; Tr. pp. 20-21.
8. Applicant's fiscal year runs from July 1 through June 30. Its sources of unrestricted revenue for the fiscal year ended June 30, 1995 were as follows:

SOURCE	AMOUNT	% OF TOTAL ²
Rental Income	\$150,865.00	51%
Laundry Income	\$ 1,188.00	<1%
Interest Income	\$ 780.00	<1%
Miscellaneous Income	\$ 3,229.00	1%
Net Assets Released from Restrictions ³	\$139,019.00	47%
TOTAL	\$295,081.00	

Applicant Ex. Nos. 4.

9. Applicant's expenses for the same period were as follows:

2. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. For example, $\$150,865.00 / \$295,081.00 = .5113$ (rounded four places past the decimal) or 51%.

3. The audited financial statement admitted as Applicant Ex. No. 4 divides applicant's revenues into "unrestricted" and "temporarily restricted" categories. The revenues classified as "temporarily restricted" were attributable to the fair market value of the a "facility" donated by the United States Department of Housing and Urban Development (hereinafter "HUD") and the depreciation associated therewith.

The fair market value of this facility was reported on the aforementioned financial statement as a "temporarily restricted asset due to certain [HUD-imposed] use restrictions." Furthermore, depreciation of the facility was reported as a release from the restrictions used for operations. Applicant Ex. No. 4.

The donated facility is part of the subject property, which was given to the applicant pursuant a regulatory agreement between applicant and HUD. HUD gave applicant title to this property with no monetary obligation. HUD did, however, make the transfer subject to unspecified annual financial reporting requirements and mandated that applicant could not rent any of the apartments contained within this or any other part of the subject property to anyone except low income and handicapped individuals. Applicant Ex. No. 4.

Analysis, *infra* at pp. 11-14 demonstrates that neither the subject property's fair market value nor the depreciation associated therewith are to be considered when analyzing whether said property qualifies for exemption from 1995 real estate taxes under the applicable statute. That analysis discloses that the rental income applicant derived pursuant to leases on apartment units located within the subject property provides strong evidence that the subject property does not so qualify. Thus, only "unrestricted" revenues (to wit, those derived from rental, laundry and interest income) are dispositive of the outcome herein.

EXPENSE	AMOUNT	% OF TOTAL
Program Services:		
Building Operation and Management	\$331,592.00	87%
Supportive Services:		
Management and General	\$ 50,530.00	13%
TOTAL OPERATING EXPENSES	\$382,122.00	
Depreciation Associated with Net Assets Released from Restrictions	\$139,019.00	N/A ⁴
RECONCILIATION:		
TOTAL UNRESTRICTED OPERATING REVENUES	\$295,081.00	N/A
LESS TOTAL OPERATING EXPENSES	-	N/A
EQUALS DEFICIT FROM OPERATIONS FOR 1995 ASSESSMENT YEAR	<u>(\$87,041.00)</u>	N/A

Id.

C. Ownership and Use Issues

10. Applicant acquired ownership of the subject property via a quitclaim deed dated June 1, 1992. Applicant Ex. No. 2.
11. The subject property was under development until construction of the apartment complex (hereinafter the "complex") located thereon was completed sometime (exact date unspecified) in 1994. Tr. p. 36.
12. All of the financing for construction of the complex was provided by HUD pursuant to Section 202 of the National Housing Act of 1959, 12 U.S.C.A. Section 1701 *et seq.* *Id.*

4. See, Footnote 3, *supra* at p. 5.

13. HUD provided this financing pursuant to a Rental Assistance Contract which provided, *inter alia*, that: (1) the complex was to consist of 28 one-bedroom apartment units, 7 two-bedroom apartment units and 4 three-bedroom apartments; (2) all of the units were to be occupied by developmentally disabled individuals; (3) the units were to rent for between \$621.00 and \$821.00 per month; (4) applicant was required to follow certain HUD-established procedures for implementing a HUD-approved affirmative action marketing plan designed to ensure compliance with HUD's anti-discrimination regulations; (5) the faith of the United States is solemnly pledged to the payment of any rental assistance payments due under this contract; and (6) HUD obligated funds for these payments. Applicant Ex. No. 5.
14. Tenants began occupying rental units within the complex toward the end of 1994. They continued to move in throughout 1995, when the occupancy rate reached 90%. Tr. pp. 36-37.
15. Approximately 98% of the complex's 1995 tenant population consisted of persons who came within the ambit of HUD regulations for providing housing to the developmentally disabled.⁵ The remaining 2% were elderly people who also fell within those guidelines. Tr. pp. 15, 33.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the

5 . The substance of those regulations, contained in 24 C.F.R. §§ 891.105, 891.310, 591.505, is not at issue herein.

requirements for exemption set forth in 35 **ILCS** 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

A. Constitutional Considerations, Relevant Statutory Provisions and the Burden of Proof

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, (35 **ILCS** 200/1-3 *et seq*). The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-65. In relevant part, that provision states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity.

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

B. Exemption under Section 15-65 of the Property Tax Code

Here, the relevant statutory exemptions pertain to "institutions of public charity" (Section 200/15-65(a)) and "facilities for persons with a developmental disability" (Section 200/15-65(c)). Our courts have long refused to grant relief under the general charitable provisions absent appropriate evidence that the property in question is owned by an entity that qualifies as an "institution of public charity[;]" and, said property is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen"). Moreover, exemption under the specific

provisions of Section 200/15-65(c) requires both ownership by a "qualified entity" and appropriate use. Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987).

1. Lack of Exempt Ownership

Analysis of the ownership issue begins with following definition:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court supplemented this definition by noting that all "institutions of public charity":

- 1) have no capital stock or shareholders;
- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;
- 4) do not provide gain or profit in a private sense to any person connected with it; and,
- 5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen, *supra*, at 157.

The above characteristics are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the applicant serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 466 (2nd Dist. 1995). In applying them, however, one must remember that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do

not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

This applicant's organizational documents indicate that its primary organizational objective is to provide housing services to the developmentally disabled. Such an objective can certainly qualify as "charitable" within the meaning of Section 200/15-65. However, the following considerations cause me to conclude that applicant's operations are not truly as beneficent in actual practice as they purport to be in word.

First, analysis of the audited financial statement (Applicant Ex. No. 4) reveals that applicant derives 97%⁶ of its unrestricted revenues⁷ from rental income, a source that cannot be attributed to "public and private charity," as required by Korzen. Although the source of funds is not the sole determinant factor of its exempt status, (American College of Surgeons v. Korzen, 36 Ill.2d 336, 340 (1967)), practical business reality suggests that applicant derives all of its operating funds from *no source other than* rental income. Therefore, its financial structure appears to be more consistent with that of a commercial landlord than an "institution of public charity."

Moreover, it must be emphasized that the above-stated principle is limited to the situation where applicant proves "that the funds and property are devoted to public purposes

6. 97% is derived via the following computations:

SOURCE/FUNCTION	NUMERICAL EQUIVALENT
1. Total Revenues	\$295,081.00
2. Less Net Assets Released from Restrictions	-\$139,019.00
3. Equals Total Unrestricted Revenues	\$156,062.00
4. Total Rental Income	\$150,865.00
5. Divided by Total Unrestricted Revenues	/\$156,062.00
6. Equals Percentage of Unrestricted Revenues Attributable to Rental Income	.96667 (rounded) or .97%

7. For explanation of the distinction between unrestricted and temporarily restricted revenues and its impact on this case, *see*, Footnote 3, *supra*, at p. 5.

...[.]" American College of Surgeons v. Korzen, *supra*, at 340. Here, the audited financial statement (Applicant Ex. No. 4) and the Rental Assistance Contract (Applicant Ex. No. 5) establish that its funds are not devoted to such purposes, but rather, to the limited class of persons falling within the ambit of HUD's regulations for providing housing to the developmentally disabled and/or low income populations.

Applicant accepted this population restriction and other limitations as part of an arm's length business transaction. This transaction was memorialized in a contract, (also negotiated at arm's length), wherein HUD agreed to provide financing for construction of the complex and guarantee any rental assistance payments due under the contract in exchange for applicant's promises to, *inter alia*, abide by the aforementioned population restriction, adhere to certain well-defined HUD-mandated reporting requirements and follow certain HUD-established procedures for implementing a HUD-approved affirmative action marketing plan designed to ensure compliance with HUD's anti-discrimination regulations. Thus, applicant's decision to the acquire ownership of the subject property by accepting whatever conditions HUD imposed on the donation thereof was but an exercise of applicant's business judgment.

That judgment was exercised by the management of an entity whose status as an Illinois not for profit corporation provides it with a legal identity that is separate and distinct from the governmental agency with which it contracts. Furthermore, the record contains no evidence establishing that this entity engages in any activity (business or otherwise) outside the confines of that specific contract. Consequently, applicant's sole corporate purpose is, in reality, doing business with HUD. Therefore, for all the aforesaid reasons, that portion of the Department's determination which denied the subject property exemption from 1995 real estate taxes based on lack of exempt ownership should be affirmed.

2. Lack of Exempt Use

The above considerations also provide evidence that the subject property was not in exempt use during the 1995 assessment year. For instance, the fact that applicant derived

practically all of its operating revenues for that tax year from rental income proves that the subject property was primarily used for rental purposes. Our courts have long held that leasing for rent constitutes a non-exempt use even where applicant applies any income derived from the leases to a beneficent purpose. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

In this case, the terms of applicant's contract with HUD pragmatically prohibit applicant from using the subject property for any purpose *except* leasing rental units to those who fall within pertinent HUD regulations. Due to this and other contractually-imposed limitations, applicant could not make such units (10% of which were vacant during the 1993 assessment year) available to persons who not could afford to pay the rental amounts applicant was contractually required to charge. Therefore, it was factually impossible for applicant to "dispense charity to all who need[ed] and appl[ied] for it," as required by Korzen, *supra*, throughout the tax year in question.

Moreover, the Rental Assistance Contract (Applicant Ex. No. 5) that governs applicant's business relationship with HUD, prevents applicant from renting to anyone except the class of persons that fall within pertinent HUD regulations. This contractual limitation constitutes an "obstacle" in the way of those who do not fall within such standards yet may need or wish to avail themselves of whatever "charitable" benefits applicant dispenses. Thus, any relief of government burdens associated with effectuating this and other contractual limitations is but an incidental byproduct of applicant's non-exempt business relationship with HUD. For this and all the aforementioned reasons, that portion of the Department's determination denying said property exemption from 1995 real estate taxes due to lack of exempt use should be affirmed.

C. Exemption Under Section 15-65(c) of the Property Tax Code

Proper interpretation of Section 15-65(c) is dependent on application of the omnibus provisions contained at the very beginning of Section 15-65. Read together, these provisions state that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65. [Emphasis added].

Cursory review of this record might lead one to conclude that applicant satisfies all of the statutorily-mandated exemption criteria, for applicant housed developmentally disabled persons at the subject property throughout the 1995 assessment year; was exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code during that time; and obtained all of the financing for construction of the complex from HUD pursuant to Section 202 of the National Housing Act of 1959, 12 U.S.C.A. § 1701 *et seq.*

The General Assembly, however, made these criteria subject to the exempt use requirement by including the phrases "[a]ll property of the following" and "when actually and

exclusively used for charitable or beneficent purposes" in the omnibus provisions of Section 15-65. Thus, in order to effectuate the rules mandating strict statutory construction, and thereby maintain the Constitutional limitations which prohibit the General Assembly from enlarging the class of exempt property beyond that set forth in Article IX, Section 6, I conclude that the subject property is not subject to exemption under Section 15-65(c) unless applicant augments the 501(c)(3) and financing evidence with appropriate proof of exempt use. *See, Korzen, supra; People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged*, 40 Ill.2d 91 (1968); *Small v. Pangle*, 60 Ill.2d 510, 515, 519 (1975); *Friendship Manor of the Branch of King's Daughters and Sons, Inc. v. Department of Revenue*, 91 Ill. App.3d 91, 94, 95 (3rd Dist. 1980).

The subject property was not in exempt use during the 1995 assessment year, principally because it was primarily used as a rental property in contravention of the plain language contained in the omnibus provisions of Section 15-65 and the case law cited, *supra* at p. 13. Moreover, the population restriction set forth in applicant's contract with HUD establishes that applicant violates *Korzen, supra*, by placing at least one significant obstacle in the way of those who needed and applied for any "charity" applicant dispensed at the complex. Therefore, the subject property is not exempt from 1995 real estate taxes under Section 200/15-65(c) of the Property Tax Code.

D. Summary

This record proves that applicant's financial structure is more akin to that of a commercial landlord than an "institution of public charity." Said record further proves that applicant acquired its ownership interest in said property as part of an arm's length business transaction wherein it

accepted certain use and other restrictions in exchange for HUD's promises to provide financing for construction of the complex and guarantee payment of any rental assistance due.

These reciprocal promises were memorialized in a contract negotiated at arm's length. For this reason, and because the record contains no evidence establishing that applicant engages in any other activity outside the confines of its narrowly-defined business relationship with HUD, I conclude that applicant's sole corporate purpose is, in reality, doing business with HUD. Consequently, any relief to governmental burdens associated with engaging in that business must be considered incidental to that non-exempt purpose, and therefore, legally insufficient to establish conformity with the statutorily-imposed ownership and use requirements.

The record also proves that the subject property was primarily used for non-exempt rental purposes throughout the 1995 tax year, and, that the practical effect of applicant's contract with HUD was to impose at least one obstacle in the way of those who sought to avail themselves of any "charitable" benefits dispensed at the complex. Consequently, applicant does not satisfy the exempt use requirement contained in Section 15-65 of the Property Tax Code.

These same considerations establish that applicant does not satisfy the exempt use requirement which the omnibus provisions make applicable to Section 15-65(c). For this and all the above-stated reasons, the Department's determination denying the subject property exemption from 1995 real estate taxes should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Numbers 16-11-412-054, 16-11-412-055, 16-11-412-056, 16-11-412-057, 16-11-412-058, 16-11-412-061 and 16-11-412-062 not be exempt from 1995 real estate taxes.

Date

Alan I. Marcus
Administrative Law Judge